

REMARKS

Claims 11-23 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,405,868. Applicant submits that the Terminal Disclaimer submitted herewith overcomes this rejection.

The Examiner has rejected claims 11, 12, 14, 17, 20 and 22 under 35 U.S.C. § 102 (b) as being anticipated by Weisberg. In rejecting the claims the Examiner notes that applicant has not claimed the combination of the liquid substance with the flexible receptacle and further notes that the functional limitation of how the insert provides treatment to the liquid substance is only considered an intended use limitation which has been given little weight with respect to the patentability of the invention. Applicant has carefully considered this rejection but it is most respectfully traversed for the reasons discussed below.

Before discussing the rejection, applicant first wishes to emphasize that the gist of applicant's invention resides in the selection of material used to make the insert so that the insert has an anti-degradation and/or anti-contamination property. By making the insert out of material which has this particular characteristic or property, the insert protects the liquid from degradation and/or contamination when the insert comes in contact with the liquid.

Independent claims 11 and 22 have been amended to more particularly emphasize the above described aspect of the invention. In this regard it is to be noted that claims 11 and 22 include the limitation which requires that the insert is "made of material having an anti-degradation and/or anti-contamination property".

In view of the above, it is clear that independent claims 11 and 22 now more particularly recite that the insert is made of material having the anti-degradation and/or anti-contamination properties. Clearly, this limitation is not a functional limitation and must therefore be given full weight and consideration.

Neither Weisberg nor any of the references cited by the Examiner disclose or teach an insert wherein the material of the insert is selected for the anti-degradation and/or anti-contamination property. Accordingly, Weisberg does not disclose each and every feature of the rejected claims and thus there is no anticipation by Weisberg of these claims.

Claims 11, 13, 19 and 22 have been rejected under 35 U.S.C. § 102 (b) as being anticipated by Zahka. In rejecting the claims the Examiner has not made any finding a fact with respect to applicant's use of an insert which has the above-mentioned characteristic or property. This is not surprising since Zahka does not even remotely disclose or suggest an insert made out of material which has the above-described anti-degradation and/or anti-contamination property. In this regard, it is to be noted that the objective of Zahka is to store a hydrophobic membrane filter in a sterilized pre-wet condition because of difficulties associated with wetting the hydrophobic membrane material. Zahka requires that the filters must be chemically inert (see column 1, lines 32-34). In contrast, the insert of applicant's invention provides protective treatment for the liquid in the container due to the aforementioned anti-degradation and/or anti-contamination property of the material which is used to make the insert of applicant's invention. In other words, the insert of applicant's invention provides protective treatment for the liquid in the container. Such protective treatment is not possible with an insert which is inert. The filter of Zahka, being inert, doesn't provide any anti-degradation and/or anti-contamination benefits such as an antibacterial benefit

obtainable with applicant's invention. Accordingly, applicant submits that Zahka does not anticipate claims 11, 13, 19 and 22.

Claim 15 has been rejected under 35 U.S.C. § 103 (a) as being unpatentable over Weisberg in view of Official Notice. In rejecting the claim the Examiner notes that Weisberg discloses all of the elements of claim 15, but lacks an insert made of a single piece and a peripheral groove formed halfway along the insert. The Examiner urges that the rejection is appropriate because a peripheral groove is conventionally known and does not appear significant since the insert provides sufficient room within the receptacle to push out the article. Applicant has carefully considered this rejection but it is most respectfully traversed for the reasons discussed below.

Firstly, claim 15 depends from claim 11 and thereby includes all of the limitations of claim 11 therein, including the limitation discussed above with respect to the anti-degradation and/or anti-contamination property of the insert. Thus, using an insert made up of a single piece with a peripheral groove formed halfway along the insert in Weisberg's invention will not result in applicant's invention. Accordingly, it is clear that claim 15 is not obvious over Weisberg in view of Official Notice.

Secondly, applicant submits that the rejection of claim 15 is improper since the Examiner has no factual basis to support the conclusion that the peripheral groove used in claim 15 is conventional. The Examiner's statement in this regard is nothing more than an unsubstantiated conclusion for which there is no basis in fact.

In view of the above, applicant submits that the rejection of claim 15 is untenable and must be withdrawn.

Claims 19 and 23 have been rejected under 35 U.S.C. § 103 as being unpatentable over Weisberg. In rejecting the claims, the Examiner urges that Weisberg discloses all of the elements of the rejected claims, but lacks an insert made up of a single piece and a single piece made out of a plurality of granules. Applicant submits that this rejection should also be withdrawn since claims 19 and 23 require that the insert is made of material which has the aforementioned anti-degradation and/or anti-contamination property by virtue of their dependency on claims 11 and 22 respectively. As noted above, Weisberg does not even remotely disclose or suggest this aspect of applicant's invention. Accordingly, using a single piece insert or an insert made out of a plurality of granules in place of the insert disclosed by Weisberg will not result in the invention of claims 19 and 23.

Claims 16, 18, 21 and 22 have been rejected under 35 U.S.C. § 103 (a) as being unpatentable over Weisberg in view of Bougamont (WO 97/10160). In rejecting the claims, the Examiner urges that Weisberg discloses all of the elements of the rejected claims, but lacks the bacterial agent and the porosity of the material constituting the insert. The examiner turns to the teaching of Bougamont for this aspect of the applicant's invention. In this regard, the Examiner argues that Bougamont suggests providing antibacterial agent in a dispenser for a product packed in liquid, for pharmaceutical applications. The Examiner concludes that it would therefore be obvious to provide an antibacterial agent on the insert of Weisberg to prevent bacterial buildup. Applicant has carefully considered this rejection but it is most respectfully traversed for the reasons discussed below.

As noted above, Weisberg does not disclose or suggest an insert which is made of material having the above-described anti-degradation and/or anti-contamination property. Applicant submits that WO 97/10160 also fails to

disclose or suggest this aspect of applicant's invention. In this regard it is to be noted that WO 97/10160 discloses a dispenser for liquid wherein the surfaces of all or some parts of the container which contact the product are treated in such a way that an antibacterial agent remains attached to the surfaces when the product is being dispensed. However, it is critical to note that this reference **does not use an insert and does not teach or disclose an insert made of material having the required anti-degradation and/or anti-contamination property**. At best, combining WO 97/10160 with Weisberg will result in a receptacle having an inside surface with the desired anti-degradation and/or anti-contamination property but will not result in applicant's invention wherein the insert is a solid material having the desired anti-degradation and/or anti-contamination properties. In short, therefore, the combined teachings of Bougamont and Weisberg will not result in the claimed invention.

In rejecting claims 16, 18 and 21-22 under 35 U.S.C. § 103 (a), the Examiner concludes that it would have been obvious to provide the desired porosity for the sponge material to absorb the liquid content within the insert. However, the Examiner provides absolutely no factual basis in support of this conclusion. Accordingly, applicant submits that the rejection is improper on this ground alone.

Applicant has added new claim 24 which is identical to currently amended claim 11 with the only exception being that claim 24 further requires that the liquid substance within the receptacle is part of the claimed invention. Applicant submits that the Examiner's statement that "applicant has not claimed the combination of the liquid substance with the flexible receptacle" is no longer appropriate to claim 24.

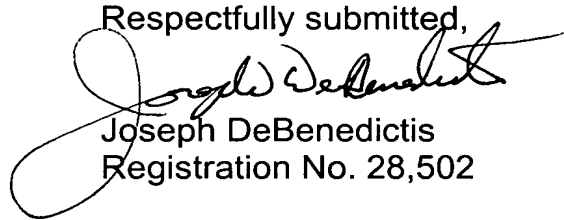
Appl. No. 10/098,512

In view of the above arguments and amendment to the claims, applicant respectfully requests reconsideration and allowance of all of the claims which are currently pending in the application.

Date: August 14, 2003

BACON & THOMAS
625 Slaters Lane, Fourth Floor
Alexandria, Virginia 22314
Phone: (703) 683-0500

S:\Producer\jdb\Cabinet Beau de Lomenie\BOUGAMONT 098512\A01.wpd

Respectfully submitted,

Joseph DeBenedictis
Registration No. 28,502